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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/646,429	08/22/2003	Robert L. Billmers	3043.FDI	9142

7590 01/28/2008  
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EXAMINER
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TRAN LIEN, THUY

ART UNIT	PAPER NUMBER
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1794

MAIL DATE	DELIVERY MODE
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01/28/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	10/646,429		BILLMERS ET AL.	
	<b>Examiner</b>		<b>Art Unit</b>	
	Lien T. Tran		1794	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 November 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8 and 10-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8, 10-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

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Claims 1,10,11 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Bell et al. and Mizoguchi et al.

Bell et al disclose a fried composition comprising a food portion and a batter containing starch that has been cross-linked with succinic anhydride. The batter adheres directly on the food portion. The food portion includes chicken, fish, fruit etc.. ( see col. 2 lines 20-25, col. 3 line 14, col. 7 lines 15-20, col. 8 lines 13-14).

Bell et al disclose coating food composition with starch succinate; thus, it is inherent the food will have the claimed reduction of fat content as claimed. Bell et al are silent as to whether the starch succinate is an ester. Mizoguchi et al in a process of making processed starch disclose that examples of esterifying agents useful for preparing cross-linked starch esters are acetic anhydride, succinic anhydride etc.. Bell et al disclose cross-linking with succinic anhydride; thus the starch in Bell et al is a starch succinate ester as evidence by Mizoguchi et al.

Claims 2-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bell et al in view of Richards et al.

Bell et al do not teaching converting the starch, the water fluidity and the amount of succinic anhydride.

Richards et al teach a method of making lipophilic starch derivative for use at coating material. The process includes the steps of esterification of the starch with n-octenyl succinic anhydride. The amount of anhydride used is generally from about .1-10%. The esterified starch is converted by enzyme treatment to decrease the viscosity of the starch suspension. ( see col. 2 lines 60-68, col. 3 lines 30-40)

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It would have been obvious to one skilled in the art to convert the starch in the Bell et al process as taught by Richards et al when desiring to obtain a starch suspension having low viscosity. For example, when desiring only a thin film of starch on the food portion instead on thicker layer of a batter, it would have been obvious to have a starch suspension with low viscosity. The amount of water fluidity depends on the viscosity desired and this is a result-effective variable which can readily be determined by one skilled in the art. It would have been obvious to vary the amount of succinic anhydride depending on the degree of cross-linking desired. Since the starch is used for coating, it would have been obvious to one skilled in the art to follow the guide line in the amount used as taught by Richards et al.

Claims 8, 13-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bell et al in view of Wu et al.

Bell et al do not disclose potato product, adding another starch and the processing steps as in claims 14 and 20.

Wu et al disclose a process for coating potato strips. The process includes the steps of blanching the potato, treating the potato in sodium chloride solution, and coating the potato with starch solution. Wu et al teach adding different type of starch in addition to the main starch component. ( see col. 3 and col. 5 lines 63-67)

Bell et al disclose other products can be coated; thus, it would have been obvious to coat potato product when desiring crisp coating on such product. When the food product being coated, it would have been obvious to one skilled in the art to process the potato according to conventional method as disclosed by Wu et al. It would

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also have been obvious to add another starch to the batter of Bell et al to obtain different flavor, texture, viscosity etc.. Adding combination of starches in coating composition is known as shown by Wu et al. It would have been obvious to one skilled in the art to determine the appropriate amount of starch to obtain the most optimum product. This can readily be determined through routine experimentation. It would have been obvious to add the starch to the blanching water when the food portion is treated in the blanching water because this will save a separate coating step. Blanching the food in the water will cause any component in the water to adhere to the food. It would have been obvious to reconstituting the product by frying or oven heating depending on the texture desired. Frying will give a crispier texture.

Claims 1, 2 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shi et al ( US2003/0099744).

Shi et al disclose a food composition comprising a food portion and a coating comprising starch succinate that is converted. The starch can be a pregelatinized starch. ( see paragraphs 0015, 0017, 0024, 0040)

Shi et al do not disclose the food composition is a fried composition.

It would have been obvious to one skilled in the art to make a fried composition when wanting food having different texture and flavor. Both baking and frying are well known cooking process in the art and the selection of which depends on the fat content, calorie content, taste, texture, flavor etc.. wanted.

In the response filed 11/27/07, applicant argues that Bell et al involve an ungelatinized, uncooked, highly cross-linked starch while this application involves a

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coated, cooked starch succinate ester for fat reduction in fried food. This argument is not persuasive. The starch in Bell et al is ungelatinized and uncooked when it is a batter. However, this batter is used to coat foodstuffs prior to frying; the foodstuffs are then fried. Thus, the starch in the end fried food is not uncooked and ungelatinized. The end product is a fried product which is the same as claimed. As to the fat reduction, the Bell et al product is coated with the same starch as claimed; thus, it is inherent that the product has the same fat reduction. As to the cross-linking, the claims do not exclude cross-linking; as long as the starch is a starch succinate ester, it meets the claimed limitation. Applicant argues that Bell et al disclose a highly cross-linked starch and not a starch ester. The Bell et al starch is a starch succinate ester as evidenced by Mizoguchi et al and applicant has not presented any evidence to dispute this. Applicant states in the response that the starch disclosed in Bell et al is a cross-linked starch( succinate diester). A diester is a starch ester. The claims do not distinguish between mono ester and diester. Applicant also argues the Mizoguchi et al reference. It is believed that applicant had misinterpreted the rejection. The Mizoguchi et al reference is not used to rejection claims 1, 9-12. It is only used in the rejection as evidence that the starch disclosed in Bell et al is a starch succinate ester.

With regard to the Richards et al reference, applicant argues the starch composition of Richards et al is a lipophilic starch which is different from Bell et al and there is no suggestion of how to combine the reference. The Richards et al reference is relied upon to show the converting of starch to adjust the viscosity of the starch. The rejection sets forth the reason for why one skilled in the art would be motivated to

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convert the starch disclosed in Bell et al. Applicant does not argue this position and only states that there is no suggestion to combine.

With regard to the Wu reference, applicant argues Wu does not cure the deficiency of Bell which does not use or suggest the use of a starch succinate ester is fried food composition. The basis of this argument is unclear; as set forth above, Bell does disclose the use starch succinate ester. Thus, the Wu reference is not relied upon to show the use of starch succinate ester. Applicant does not argue the position set forth in the rejection with respect to the Wu reference.

With respect to the Shi et al reference, applicant argues there is no teaching or suggestion of using a glaze to provide a food composition with fat reducing properties. Shi et al teach coating foodstuff with the same starch as claimed; thus, it is inherent the food product will have the same fat reducing properties. In any event, the claims rejected over the Shi et al reference do not recite any limitation with respect to fat reduction.

Applicant's arguments filed 11/27/07 have been fully considered but they are not persuasive.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

January 24, 2008

*Lien Tran*  
LIEN TRAN  
PRIMARY EXAMINER  
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